

## Blackmon, Dajuana

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**From:** Laverdure, Del  
**Sent:** Tuesday, January 24, 2012 11:34 AM  
**To:** Blackmon, Dajuana  
**Subject:** FW: FYI

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**From:** Darling, Nedra  
**Sent:** Friday, January 13, 2012 1:04 PM  
**To:** Newland, Bryan; Laverdure, Del  
**Subject:** RE: FYI

Thanks.

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**From:** Newland, Bryan  
**Sent:** Friday, January 13, 2012 11:04 AM  
**To:** Laverdure, Del  
**Cc:** Darling, Nedra  
**Subject:** Fwd: FYI

He must have taken those quotes from my remarks in Vegas on Saturday.

Sent from my iPad

Begin forwarded message:

**From:** "dgpalermo@aol.com" <dgpalermo@aol.com>  
**Date:** January 13, 2012 5:33:14 AM PST  
**To:** "Newland, Bryan" <Bryan\_Newland@ios.doi.gov>  
**Subject:** Re: FYI

## Feinstein Leads Fight Against Off-Reservation Gambling

13 Jan, 2012

[Previous](#) [Next](#)

[Dave Palermo, Gambling Compliance](#)

California has become ground zero for growing opposition to the spread of tribal casinos off existing reservations, with U.S. Senator Dianne Feinstein serving as the movement's legislative leader.

Six of 20 pending applications for casinos under review at the Department of Interior's Bureau of Indian Affairs involve California tribes. But opponents to the spread of tribal gambling contend 21 California bands are hoping to operate casinos on newly acquired lands.

The "off-reservation" list include tribes with existing reservations, landless tribes and those seeking federal recognition or have recently been restored.

Feinstein, through pending legislation and directives to Interior, is attempting to limit the spread of Indian casinos by amending the Indian Gaming Regulatory Act beyond a “two-part determination” requiring state and local approval of off-reservation casinos.

“Enough is enough when it comes to reservation shopping,” Feinstein, a Democrat, said in announcing co-sponsorship with Sen. Jon Kyl, Republican of Arizona, of legislation filed in April requiring tribes prove historic and modern connections to new lands for casinos.

“Some tribes ... ignored the intent of Congress by taking land into trust miles from their historical lands ... to produce the most profitable casino ... often with little regard to local communities.”

“[Feinstein] is opposed to gambling in general,” said a source close to the senator who requested anonymity.

“The expansion of gambling in California has not come from the card rooms. It’s come from Indian casinos. So that’s where she’s been most vocal.”

In contesting new casinos and the San Pablo gambling hall operated by the Lytton Band of Pomo Indians near her San Francisco home, the senator has been blamed for blocking a congressional “fix” to a 2009 U.S. Supreme Court ruling that has delayed Interior action on hundreds of non-gambling land/trust applications.

Indian leaders contend a congressional remedy to the court ruling in *Carcieri v. Salazar* limiting land/trust applications for tribes not under “federal jurisdiction” in 1934 is being “held hostage” by Feinstein and other opponents of off-reservation gambling.

Meanwhile, California critics of new Indian casinos, including a number of tribes, have contended the trend violates ballot initiatives that in 2000 opened the door to compacted tribal gambling. They said voters were promised gambling would be conducted on existing reservations.

California is the country’s largest Indian gambling market with 60 tribes operating 61 casinos (one in Nevada) generating \$6.9bn a year. There are 67 ratified tribal-state compacts, according to the California Gaming Control Commission, with new casinos planned or under construction.

The explosion of tribal gambling in California angers Feinstein and groups such as Stand Up For California and Keep Indian Gaming on Indian Lands (KIGIL), a coalition that includes several tribes. KIGIL opposes tribes seeking casinos outside their ancestral territory.

Feinstein recently asked the DOI to review its decision to approve applications by North Fork and Enterprise rancherias to establish casinos 35 miles from their Madera and Yuba County reservations. Federal law requires additional approval by Governor Jerry Brown.

“Although the federal government mistakenly opened the doors for these casinos, the governor has the chance to follow the will of the people,” said Cheryl Schmit, director of Stand Up For California.

“Off-reservation casinos pose a threat to our communities, are inconsistent with what voters agreed when they passed Proposition 1A and, if approved, would open the off-reservation casino floodgates throughout California.”

Both sides dispute whether the projects have local support.

Jacob Appelsmith, Brown's Indian affairs consultant, has traveled "anywhere and everywhere this has been an issue" to meet with tribes and local officials.

"No two situations are alike," Appelsmith said.

KIGIL spokesman Roger Salazar said a survey shows 72 percent of Californians oppose casinos off existing reservations.

Several Indian bands are disturbed tribes are seeking casinos outside their historical territory. They contend the most egregious example is Los Coyotes effort to build a \$160m casino in Barstow, 170 miles from its San Diego County reservation.

"This isn't a gaming issue. This is encroachment" of Serrano ancestral lands, Jacob Coin, spokesman for the San Manuel Band of Mission Indians, said of the Barstow proposal. San Manuel citizens are descendants of the Serrano.

Some California tribes came under attack when they solicited Feinstein's aid in drafting legislation limiting the ability of tribes to establish reservations off their ancestral lands.

The resulting Feinstein/Kyl bill "went too far" in seeking limits beyond ancestral ties, said a lobbyist who requested anonymity. Interior was also chastised for helping Feinstein draft the legislation, which remains in limbo.

Discussions with Feinstein drew the ire of tribes seeking a "clean" legislative remedy to the Carcieri decision that did not require a legislative limit to off-reservation casinos.

But lobbyists contend Feinstein was one of several Democrats and Republicans unwilling to consider a "Carcieri" fix without a legislative limit to off-reservation casinos.

"The senator firmly believes we need to address gaming in any Carcieri fix," said the Feinstein source, although she remains concerned about the impact Carcieri has had on the land/trust process.

"She is very sympathetic," the source said. "She recognizes that gaming — because of the massive expansion of gaming and the scrutiny gaming applications get — has slowed the entire process. She recognizes that's a problem.

"She was certainly vilified because she was outspoken and said, 'This is what I need to support a Carcieri fix.' That's the way [Feinstein] does business. She says what she wants and she negotiates.

"But what do we do about it when you can take land into trust, then all of a sudden it's eligible for gaming and you have a casino on it?

"[Feinstein] would like to find a compromise that addresses gaming; that addresses the Carcieri decision and gives the authority to [Interior] to take land into trust for the tribes."

As the controversy waged, President Obama appointee Larry Echo Hawk, Interior's assistant secretary for Indian Affairs, has gradually chipped away at a backlog of casino land/trust applications that grew to 33 during the Bush administration, issuing 13 rulings.

"One of the objectives we had was to normalize the gaming application review process" following the Carcieri decision, said Bryan Newland, senior policy adviser.

"Applications are being reviewed ... in accordance" with IGRA, Newland said.

"The law requires a balance between tribal interests, state interests, local interests and inter-tribal interests. I think the decisions reflect that balance."

Meanwhile, the Wappo Indians of Napa Valley continue to seek federal recognition with hopes of operating a casino, and the Tejon Tribe of Kern County, after an 18-year battle, gained its federal recognition on January 3.

Las Vegas casino owner William C. Wortman paid Tejon legal fees.

-----Original Message-----

From: Newland, Bryan <[Bryan\\_Newland@ios.doi.gov](mailto:Bryan_Newland@ios.doi.gov)>

To: [dgpalermo@dgpalermo@aol.com](mailto:dgpalermo@aol.com)

Sent: Wed, Jan 11, 2012 8:56 am

Subject: Re: FYI

Thanks for sending, Dave.

Sent from my iPad

On Jan 11, 2012, at 1:08 AM, "[dgpalermo@aol.com](mailto:dgpalermo@aol.com)" <[dgpalermo@aol.com](mailto:dgpalermo@aol.com)> wrote:

## Obama Officials Promise Scrutiny Of Tribal Casino Revenue Deals

11 Jan, 2012

<<[Previous](#) [Next](#)>>

[Dave Palermo, Gambling Compliance](#)

In the wake of a recent court ruling involving a California Indian tribe, Department of Interior officials have pledged to scrutinize future tribal-state gambling agreements with revenue sharing clauses to ensure they do not violate tax provisions of federal law.

"The state has to make a meaningful concession to the tribes to [justify] revenue sharing,"

Bryan Newland, senior policy adviser for the Department of Interior's Bureau of Indian Affairs, told attendees at last week's National Council of Legislators from Gaming States (NCLGS) conference in Las Vegas.

"Going forward, we're going to continue to scrutinize revenue sharing provisions in tribal-state compacts."

The U.S. Supreme Court last year upheld a [9th Circuit Court of Appeals ruling that former Governor Arnold Schwarzenegger negotiated in "bad faith"](#) in demanding that the Rincon Band of Luiseño Indians pay a portion of its gambling revenue to the state general fund in exchange for additional slot machines for its Harrah's Rincon casino.

The court ruled the payments constituted a tax in violation of the Indian Gaming Regulatory Act (IGRA) of 1988. Jurists said the money should instead go to local governments to mitigate environmental, traffic, law enforcement and other casino impacts.

“States cannot demand payments beyond the actual costs of regulation and mitigation of local impacts,” Rincon attorney Scott Crowell said. “If they demand anything beyond that, it’s an illegal tax under IGRA.”

“The [Rincon] decision will have substantial effects nationwide on how states negotiate future compacts and what states can legally ask tribes to pay for,” California Sen. Tom Harman told conference attendees.

Ten of 28 states with Indian government casinos require that tribes pay a portion of gambling revenue to the state beyond what it costs to regulate casinos and mitigate impacts on local governments.

But NCLGS panelists said the Rincon ruling will put legal weight behind IGRA provisions that the bulk of Indian gambling revenues should go to tribes and local governments.

The Department of Interior is willing to approve tribal-state compacts with revenue sharing provisions as long as tribes receive a “substantial benefit” in exchange for the payments, which are permissible under IGRA, Newland said. In many states the benefit is the exclusive right to operate casinos.

But tribal casino exclusivity in California is guaranteed in the state constitution, limiting exclusivity as a tool in negotiations between the state and 67 tribes with ratified compacts.

California has the largest state-wide tribal gambling in the country, with tribal winnings at about \$7bn a year.

In renegotiating 1999 compacts and new agreements, Schwarzenegger demanded tribes pay their “fair share” to help alleviate a state budget deficit. Fifteen tribes currently pay \$320m a year into the state general fund in exchange for the right to operate additional slot machines over the 2,000 limit in the 1999 compacts.

But the policy violated IGRA principles.

“The primary beneficiary of Indian gaming under IGRA was supposed to be Indian tribes, not the states,” said Mark Van Norman, senior adviser to the National Indian Gaming Association.

“Tribal casino revenue is intended to fund tribal services, programs and provide schools, health care, water and sewer services, fire ... and very important cultural renewal.”

Jacob Appelsmith, consultant on Indian issues to California Governor Jerry Brown, said the administration will not continue the Schwarzenegger policy of seeking tribal revenue to alleviate a budget deficit.

“The governor and I have said, for several years now ... we believe the best policy for tribal gaming revenue is that the primary beneficiary would be the tribes, but the beneficiary along with them should really be local people,” Appelsmith said. “That’s the counties; that’s the cities.”

Although the Rincon decision will not set a legal precedence for other states, it will give the Department of Interior a strong legal position in ruling on the legality of revenue sharing in future compacts.

“This issue is cropping up in several places,” Crowell said.

Since IGRA was enacted the Department of Interior has only disapproved six of hundreds of tribal-state compacts submitted for review, Newland said.

During the George W. Bush administration, from 2000 to 2009, the Department of Interior and the Bureau of Indian Affairs “effectively abdicated its oversight role,” Newland said, approving or taking no action on tribal-state compacts submitted for its review.

“During that period tribal revenue sharing steadily crept upward,” Newland said, a trend that came to a halt under President Obama appointee Assistant Secretary Larry Echo Hawk.

“When we came into office two years ago we said that was going to change,” Newland said, and the department has rejected a handful of compacts, largely because of revenue sharing clauses.

IGRA intended that compact negotiations strike a balance between tribal, state and local government interests, panelists said.

“The majority of the compacts reflect tribal-state cooperation,” Newland said.

Tribal government gambling is responsible for 600,000 direct and indirect jobs, Van Norman said, most of which are held by non-Indians.

Tribal casinos also generate \$9.4bn a year in federal taxes and \$2.4bn in state taxes and revenue sharing payments.

“When we look at the structure there is always a benefit to the states built in,” Van Norman said.

“There’s great flexibility in the structure. There’s protection for tribal rights, but there’s flexibility to deal with the impacts on state and local governments.”